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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/758,555

01/16/2004

Rafael Rivera

84,555

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OFFICE OF COUNSEL, CODE 004

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EXAMINER

ADAMS, GREGORY W

ART UNIT

PAPER NUMBER

3652

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/758,555

Applicant(s)

RIVERA ET AL.

Examiner

Gregory W. Adams

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on Jan. 3, 2007 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ide (US 5,039,275) (previously cited) in view of Montgomery (US 4,106,639) and Toniolo (US 4,431,359)

With respect to claim 1, Ide discloses a system comprising:

- mobile loader 32 including a fixedly attached motorized cab for propelling the mobile loader to a load transfer dockside location underlying the crane;
- platform 33, 35 in a loader having guide rails 81, a platform for carrying a container between guide rails 81;
- hoist means 23, 163 for transfer of a container between a platform and a delivery vehicle 159;

- lift means 99 connected to a platform for elevation thereof;
- wherein a loader comprises a wheeled frame having a first pair of vertical posts and a second pair of vertical posts; and
- a loader having an elongated bottom support with lift means 99 disposed in underlying relation to a platform, a platform adjacent a first pair of vertical posts, and a delivery vehicle receiving opening adjacent a second pair of vertical posts; and
- sensor grid means (C6/L35-45).

With respect to hoist means, lift means and sensor grid means, the following guidance is provided to determine whether applicant has complied with the requirements of 35 U.S.C. 112, second paragraph, when 35 U.S.C. 112, sixth paragraph, is invoked if Applicant has satisfied the Three-Prong test: (1) applicant must use "means for" or "step for" language, (2) the "means for" or "step for" language must be modified by functional language, and (3) the "means for" or "step for" must not be modified by sufficient structure, material, or acts for achieving the specified function. If the three prong test is met Applicant has successfully invoked 35 U.S.C. 112, sixth paragraph. An invocation of 35 U.S.C. 112, sixth paragraph must accompany a description of the where in Applicant's specification page and line number the appropriate functional language is found. See MPEP 2181-2186; see also *In re Donaldson*, 16 F.3d at 1195, 29 USPQ2d at 1850.

Ide discloses hoist means 23 for transfer of a container between a platform and a delivery vehicle, and does not disclose flare means, motorized means, cab for

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propelling a mobile loader, and positioning a delivery within a loader. Montgomery discloses guide rails having flare ends 75 having motorized means (C7/L30-40) because "in the container industry, containers are typically eight feet wide, eight to ten feet in height, and of varying length. Because of their varying length, the gathering means 75 must be mobile on the respective support means 72 to move inwardly and outwardly to accommodate containers of varying length." C7/L49. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Ide to include flare means and motorized means, as per the teachings of Montgomery, to accommodate various container sizes.

Toniolo discloses a cab 2 for propelling a mobile loader 1 and positioning a delivery (Fig. 34: 68) within a loader 1 to effect the following improvements over previous mobile loaders: "elimination or decrease of the transfer down times; reduction of the nonproductive vertical distance covered by the grabbing element of the crane to the advantage of the productive run; abbreviation of the maneuvering time of the crane operator and decrease of the centering problems; decrease of the container transfer costs; a possibility of having a self-propelled elevator or one incorporated completely or in part with the crane; a possibility of carrying out the double cycle of alternating unloading and loading very advantageously, that is of one container going and the other returning, which until the present has been the subject of inconvenient attempts, by means of two elevators side by side on the quay under the same crane; continuity of the cycle; a possibility of loading and unloading containers of different lengths; possibility of loading and unloading containers directly on respectively from lorry trailers or railway

wagons." C2/L23. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the mobile loader of Ide, to include a cab for propelling a mobile loader and positioning a delivery within a loader, as per the teachings of Toniolo, for substantial throughput gains as noted above.

Response to Arguments

Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

With respect to hoist means, lift means and sensor grid means, the following guidance is provided to determine whether applicant has complied with the requirements of 35 U.S.C. 112, second paragraph, when 35 U.S.C. 112, sixth paragraph, is invoked if Applicant has satisfied the Three-Prong test: (1) applicant must use "means for" or "step for" language, (2) the "means for" or "step for" language must be modified by functional language, and (3) the "means for" or "step for" must not be modified by sufficient structure, material, or acts for achieving the specified function. If the three prong test is met Applicant has successfully invoked 35 U.S.C. 112, sixth paragraph. An invocation of 35 U.S.C. 112, sixth paragraph must accompany a description of the where in Applicant's specification page and line number the appropriate functional language is found. See MPEP 2181-2186; see also *In re Donaldson*, 16 F.3d at 1195, 29 USPQ2d at 1850. In this case Applicant has not properly invoked. Thus, the cited prior must merely disclose the function therein. In this case, the cited prior discloses each said means.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory W. Adams whose telephone number is (571) 272-8101. The examiner can normally be reached on M-Th, 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GWA


GENE O. CRAWFORD
SUPERVISORY PATENT EXAMINER